



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a one-year on-site Catering agreement at Hutchins Street Square with Wine Valley Catering, Inc.

MEETING DATE: April 7, 2004

PREPARED BY: Tea Silvestre, Community Center Director

RECOMMENDED ACTION: Adopt resolution authorizing the City Manager to execute a one-year on-site Catering agreement at Hutchins Street Square with Wine Valley Catering, Inc.

BACKGROUND INFORMATION: This agreement consists of renting a small office space (no more than 100 sq ft) at Hutchins Street Square to Wine Valley Catering, Inc. (WVC), of Napa, California, for \$500 per month for one year for facilitation of on-site catering services. This amount includes utilities, but excludes the cost of a telephone or fax line. The agreement also requires WVC to pay the City a 2% commission on each non-city event they cater at the Square for use of the kitchen. Renters will not be required to use WVC for events held at the Square.

The Request for Proposals was approved by Council on January 7, 2004. The Request for Proposals was distributed to local providers (see attached) and a notice of the availability of the RFP was published in the Lodi News Sentinel on Wednesday, January 14, 2004. The Community Center Director conducted an on-site pre-proposal tour on Tuesday, January 13, 2004. Five businesses attended the tour. The City received only one proposal for this project. Along with the evaluation of the proposal, interviews were conducted with principals of WVC (the sole applicant). The City's interview team consisted of Tea Silvestre, Community Center Director and the Hutchins Street Square Foundation Board of Directors.

WVC has a long and solid reputation for providing quality catering services for events of all sizes and budgets. WVC has provided catering services to several private and business events in and around Lodi, including many weddings and parties; the Taste of Lodi event; the Legends of Lodi Wine Auction; Lodi Memorial Hospital; Woodbridge Winery; and the Hutchins Street Square Foundation. We are confident that the level of their service will compliment the services provided by the Square and its facilities.

WVC estimates their presence at the Square will provide a small boost to the local economy by generating approximately 15 part-time jobs (wait staff) over the next year. They have also developed a strong marketing plan which intends to bring new business to the Square by fostering relationships with the meeting planners and event planners of local and regional corporations and associations.

FUNDING: None.


Tea Silvestre, Community Center Director

APPROVED:


H. Dixon Flynn, City Manager

CITY OF LODI CATERING AGREEMENT

THIS CATERING AGREEMENT ("Agreement") is made as of April 9, 2004 between **THE CITY OF LODI**, a municipal corporation ("CITY"), and, **WINE VALLEY CATERING, INC.** ("OPERATOR").

WHEREAS, CITY desires to engage OPERATOR to manage and operate the food and beverage services at Hutchins Street Square Performing Arts & Conference Center, located in Lodi, California ("Center"); and

WHEREAS, OPERATOR wishes to provide such services, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of the promises exchanged herein by the parties, it is hereby agreed:

Article I. TERM

The term of this Agreement shall be for a period of one (1) year beginning April 9, 2004. If the OPERATOR shall for any reason hold over beyond such term with the consent, expressed or implied, of CITY, such holding over shall be from month-to-month only subject to the terms and conditions of this Agreement, but shall not be a renewal thereof, and the consideration to be paid shall be at the rates prevailing under the terms of this Agreement.

Article II. DEFINITIONS

Section 2.01 "Adjusted Gross Receipts" means all amounts received by OPERATOR on all sales of Food Products prepared at the Center regardless of where sold; less (i) the amount of any federal, state or local sales or other such tax; and (ii) the amount that is received as tips or gratuities/service charges.

Section 2.02 "Backstage Catering" shall mean food and beverage services for an entertainer, cast members and road crew members associated with a designated entertainment event at a public concert or entertainment event. Backstage Catering is not part of this Agreement, but the OPERATOR shall have the right to submit a bid to the CITY for such services.

Section 2.03 "Buffet Services" are defined at the Center as the preparation and serving from a buffet line of food at a per plate, per person charge. This can be construed to be in a group price or individual person price.

Section 2.04 "Catering and Banquet Services" are defined in the Center as the preparation and serving of food at a per plate, per person charge. This can be construed to be in a group price or individual person price.

Section 2.05 "Center" shall mean the Hutchins Street Square Performing Arts and Conference Center and their grounds, any additions thereto, and any adjacent land and/or structures temporarily used in connection with Center activities.

Section 2.06 "Fiscal Year" shall mean July 1 to June 30.

Section 2.07 "Food and Beverage Service Manager" shall mean OPERATOR's chief designated representative.

Section 2.08 “Food Products” means all food and beverages and shall include without limitation, alcoholic beverages, candy and confections.

Section 2.09 “Food Services” means all food and beverage services to be provided hereunder, including without limitation, dining, catering, hospitality.

Section 2.10 “Director” shall mean Center’s Director, or a designated representative.

Section 2.11 “Licensee” shall mean any person or entity that may from time to time enter into any agreement with Center for the use of the Center for a particular purpose.

Section 2.12 “Monthly Accounting Period” means each monthly calendar period (or portion thereof) in accordance with City’s accounting calendar.

Section 2.13 “Premises” shall mean all areas, improvements, fixtures and trade fixtures upon the Center’s premises which are or may in the future be used in connection with the operation of the Food Services, including adequate storage and office space.

Article III. RIGHTS AND DUTIES OF OPERATOR.

Section 3.01 The Food Services rights granted OPERATOR shall not prevent or prohibit Center or its Licensees from engaging in or contracting outside catering services for any event. In addition, OPERATOR agrees that outside catering services may be utilized at special events sponsored by the CITY where the use of outside catering services is desirable. Use of the Center by an outside catering service may include the sale of alcoholic beverages, the use of Food Service equipment or inventory owned by the Center, or the use of the Premises as defined herein.

Section 3.02 Nature of Service to be Performed. OPERATOR shall provide the Center with those Food Services normally associated with convention center operations. These services are primarily food and beverage service, and catering related functions. Additionally, specialized services consisting of, but not limited to the following, may be required:

- (a) Room Service – Catering service will be available to meeting rooms used by Licensees. Food Services requested may range from snacks to elaborate catered meals. Hosted service is involved as opposed to individual orders, requiring constant attention by OPERATOR for re-supply, freshness purposes, and immediate removal of food stuffs, and must often be provided at specific meeting times and/or subject to other constraints imposed by the Licensee of the Center.
- (b) Exhibitor Services – Food Services shall be available to exhibitors at conventions or trade shows with Food Products served directly at their booth/display location. Price and service agreements between OPERATOR and the exhibitor shall be approved by the Director.
- (c) Portable “Thematic” Food Service – For certain events held at the Center, Licensees may require specialized or ethnic foods and beverages with related thematic presentations and displays.
- (d) Provision of Personnel – There will be occasions when OPERATOR is called upon to provide host/hostesses, bartenders and/or waiters/waitresses for specialized functions. These functions shall not detract from the normal services and staffing for which OPERATOR is responsible. Client will be charged accordingly.

Article IV. PREMISES

The Premises at the Center shall be used by OPERATOR solely in the performance of Food Services hereunder and will include the kitchen, existing storage located in kitchen area, and access to

the loading dock as needed. OPERATOR's office space (approximately 100 square feet) shall be provided by CITY at the rate of \$500 per month. In the event that OPERATOR is required to lease additional office, storage or other space outside the Center, all costs incurred by OPERATOR as a result of having to lease space shall be borne solely by OPERATOR and shall not reduce Adjusted Gross Receipts for the purpose of this Agreement.

Article V. NATURE AND SCHEDULING OF EVENTS.

Section 5.01 Description of Events. The CITY will endeavor to bring a wide variety of conventions, trade and consumer shows, exhibits, entertainment events, meetings and civic functions to the Center. However, CITY makes no warranty, express or implied, concerning the predictability and/or probability of such events. It is the mutual goal of OPERATOR and CITY to solicit and obtain the maximum number of high-quality food and beverage-associated events.

Section 5.02 Scheduling of Events. Scheduling of all events requiring the services of OPERATOR shall be mutually performed by the Operator and the Center. All events tentatively scheduled by OPERATOR utilizing the Center shall be accepted and incorporated into the official Calendar of Events, provided those activities are consistent with the policies of Center as established by the CITY and provided that the events do not interfere or conflict with other events held at the Center.

Section 5.03 OPERATOR will cater events at CITY'S request upon at least Seven Days (7) advance notice at prices and upon such other terms as are mutually acceptable to the parties. OPERATOR will try to honor any shorter notice events to the best of their abilities. CITY will not be responsible for any charges made by third parties at the Center for catering functions.

Section 5.04 Hours of Operation. OPERATOR's designated representative shall be available for contact by phone during regular business hours, currently 8:00 a.m. to 5:00 p.m., Monday through Friday.

Article VI. FINANCIAL CONSIDERATION TO CITY.

For the privilege of using the kitchen and its storage area for the preparation of any and all food services provided at the Center, OPERATOR will pay a 2% commission of total adjusted gross receipts on all events and meetings except those sponsored by the City of Lodi. Clients other than the City of Lodi and Hutchins Street Square will pay the OPERATOR 2% of the event-specific catering invoice for a "kitchen use fee."

Article VII. FINANCIAL REPORTS.

Section 7.01 Payment. OPERATOR shall submit to the CITY by the twentieth (20th) calendar day after the last day of each Monthly Accounting Period, a report of sales activity for the previous Monthly Accounting Period along with the commission payment. The report shall provide daily detail of gross revenue specified by event number, type of service, and indicate total Adjusted Gross Receipts and commissions due to the CITY, as well as year-to-date totals. Such statement shall identify all deductions from gross revenues and be signed and certified by the OPERATOR. OPERATOR shall maintain all records based upon the Fiscal Year, ("Fiscal Year" or "FY"). OPERATOR shall submit to the CITY by the twentieth (20th) day following each year of this Agreement, a report of sales activity for the previous year. The report shall summarize gross revenue specified by type of service, and indicate commission due to the CITY.

Section 7.02 Records Maintenance.

- (a) During the term of this Agreement and for a period of three (3) years following the termination of this Agreement, OPERATOR shall maintain in accordance with generally accepted accounting principles, the full and complete records regarding all Food Services performed

under this Agreement. The CITY shall have the right to reasonably prescribe the form of records to be kept by OPERATOR in accordance with this provision.

- (a) CITY shall have the right, after reasonable notice, and at reasonable times to free access to all sales reports, correspondence, memoranda, or other records of the OPERATOR relating to this Agreement for the purpose of verification of Adjusted Gross Receipts reported by the OPERATOR during the term of this Agreement.
- (b) OPERATOR shall collect and promptly disburse all taxes required by Federal, California, and local authorities and shall pay any applicable taxes relating to Food Service operations, equipment, inventory and/or rents applicable to OPERATOR.

Article VIII. EMPLOYMENT.

Section 8.01 General Guidelines.

- (a) OPERATOR shall employ its own employees and engage its own subcontractors. All employees or subcontractors shall meet all the standards set forth below. OPERATOR shall be solely responsible for the payment of all federal, state, and local employment taxes of its employees.
- (b) The employees shall be neat and clean in appearance and be courteous towards the patrons, the public and their fellow employees. All employees, except key managers and office personnel, shall be neatly attired in uniforms.
- (c) All Operator's employees shall enter and leave the Center via the entrance(s) designated by the Director. Only those employees actually working shall be permitted in the Center without charge, and any employee observed in the Center at events in which they are not working and have not paid admission, may be removed by the Director after consultation with the OPERATOR. At no time will OPERATOR permit the free entrance of any person not a bona fide employee for an event or events and no surplus of employees will be permitted for any event.
- (d) OPERATOR shall include in its employee handbook a prohibition against employees performing their duties under the influence of alcohol or chemical substances or using such substances while at the Center. The Director shall advise OPERATOR of all violations of such provisions which are brought to her attention. OPERATOR shall take action with respect to such employees consistent with the provisions of the handbook and applicable laws.
- (e) OPERATOR shall at all times enforce by adequate supervision and training of supervisory personnel a safe working environment for all employees including the supervision of all services which relate to the general safety and welfare of any persons exposed to the Food Services performed under the Agreement by OPERATOR. OPERATOR agrees to fully cooperate with Center in any employee and public safety program sponsored by the Director. OPERATOR agrees to conduct all of its operations with due diligence and care for the safety of all persons at all times.
- (f) OPERATOR acknowledges that in order to operate the Center in an efficacious manner, Center has adopted certain standards of conduct and terms of employment for all employees at the Center. These standards are embodied in this Agreement and may be contained in Operating Memoranda to be entered into by the parties in the future. OPERATOR agrees that it shall not enter into any contract or arrangement with any employee or group of employees which would in any way modify these provisions without the express written consent of Center.
- (g) OPERATOR shall provide training and direction to its employees to ensure quality of service and personal interaction with Licensees, Center staff and internally within OPERATOR's staff. Center

expects all staff associated with the Center to approach their assigned responsibilities with an attitude of service to the Licensees above and beyond common courtesy.

Section 8.02 Minimum Staffing. OPERATOR shall provide event staffing in accordance with the following minimum standards:

- (a) Waiters/waitresses – one for every twenty-four (24) guests at sit down meals; one for every thirty-two (32) guests at buffets; one for every one hundred (100) guests at cocktail parties. Bus staff shall be provided at one-half (1/2) the ratio of waiter/waitresses, provided that the physical property and sales expectations warrant as approved by the Director.
- (b) Bartenders – one for every one hundred (100) guests for host bars; one for every one hundred twenty-five (125) guests for cash bars. Provided that the physical property and sales expectations warrant as approved by the Director.
- (c) OPERATOR shall increase the number of personnel as requested by the Director if, in the Director's sole discretion, the level of service to the public is deemed unsatisfactory. Charges will be billed accordingly.
- (d) OPERATOR agrees that its Food and Beverage Service Manager or his/her designee shall be present at the Center during events with Food Service and shall be authorized to be served with complaints and notices by Center.

Section 8.03 Supervision by the Director. The Director reserves the right to request the OPERATOR to exclude from the Center, any employee whose employment is not considered to be in the best interest of the Center. The Director shall have the prior right to approve the selection of OPERATOR's management at the Center, which approval shall not be unreasonably withheld. OPERATOR agrees to pay prevailing wages in the Lodi, California area. The City reserves the right to require OPERATOR to conduct pre-hiring screening or testing of all employees, including fingerprint clearance, to the extent permitted by law. No replacement of OPERATOR's management at the Center will be permitted without prior approval of the Director, including interviewing and approving a replacement Food and Beverage Service Manager, which approval shall not be unreasonably withheld delayed or conditioned.

Section 8.04 OPERATOR shall provide the Director with the following upon request:

- (a) Copy of OPERATOR's Employee Handbook;
- (b) A statement identifying the sources to be used for obtaining non-management labor; and
- (c) An outline of the entry-level training programs for all customer-contact personnel.

Article IX. EQUIPMENT.

The OPERATOR shall on or before the date of execution of this contract prepare an existing Food Service equipment inventory (the "Inventory") for review by the Director. When the Inventory is signed by OPERATOR and the Director, it shall be incorporated into this Agreement. The OPERATOR shall update the Inventory each Fiscal Year and make recommendations with respect to replacement or upgrades of equipment provided for OPERATOR's use.

Article X. OPERATIONS GENERAL GUIDELINES.

Section 10.01 The rights of any Licensee shall not be infringed upon by any activity of OPERATOR or any of its employees. The activities of OPERATOR shall be such as to render service to patrons of the

Center in a dignified manner. OPERATOR shall cause its employees to abide by the rules and regulations of Center as to the conduct of all employees at the Center.

Section 10.02 OPERATOR shall operate the spaces designated for the purpose of the sale to the patrons of beverages, food, and confections for the convenience of the patrons during all designated Center events and at such other times as shall be reasonably required by the Director.

Section 10.03 Table skirting shall be provided and installed by Center for meetings and provided and installed by OPERATOR for functions with Food Service.

Section 10.04 Supervision by the Director. The Director shall issue reasonable rules and regulations for the operation of Food Services and OPERATOR shall operate Food Services in accordance with such rules and regulations, which may be amended from time to time. Except as otherwise expressly stated herein, the Director shall decide any and all questions that may arise as to the acceptability of services rendered by OPERATOR, as to the manner of performance, and acceptable fulfillment of this Agreement.

Section 10.05 OPERATOR shall ensure that there is an inventory of food service equipment and small wares adequate to provide full services to the patrons of the Center when contracted to provide food services

Section 10.06 OPERATOR shall replace any equipment damaged beyond repair, or rendered useless by wear and tear, unless in the opinion of the Director such equipment is unnecessary to the proper functioning of the Food Services. The Center shall replace any equipment damaged beyond repair due to City employee's negligence unless in the opinion of the Director and OPERATOR the equipment is unnecessary to the proper functioning to the Food Services. All replacement equipment shall be subject to approval of the Director as to type and similarity to that replaced.

Section 10.07 Compliance with Law. The Food Services shall materially comply with the laws, regulations, and ordinances of the United States Government, the State of California, and the City of Lodi and County of San Joaquin. Such operations must be conducted so as not to unreasonably interfere, through noise, odor, visual aesthetics, with any Licensee's or patrons enjoyment of the Convention Center facilities. OPERATOR shall procure and keep in force during the term of this Agreement all permits and licenses required by all laws and regulations of the United States government, the State of California, and the City and County of Lodi.

Article XI PRODUCTS AND PRICING.

OPERATOR recognizes that the quality of items sold and services performed at the Center is a matter of highest concern to the City and is the essence of this Agreement. OPERATOR shall provide products of quality, and at prices consistent with similar products presently being offered in other similar facilities. The Director reserves the right to determine, in his/her reasonable discretion, whether a particular product complies with these standards. Price increases shall require the prior written approval of the Director.

Section 11.01 Quality.

- (a) OPERATOR represents and warrants that all items it sells will be of the highest practicable quality consistent with the pricing schedules agreed upon by OPERATOR and the Director. Special attention will be given by OPERATOR to the promptness and delivery of all services.
- (b) OPERATOR shall procure all Food Products and operating supplies from local Lodi area sources where possible, provided local Lodi area sources meet quality requirements and are price competitive. The Director shall have the final approval of all OPERATOR's suppliers other than alcoholic beverage suppliers.

- (c) All Food Products kept for sale shall be subject to inspection, and approval or rejection by the Director during all times that Food Services are offered. Rejected Food Products are those that pose a health risk or are materially below the standards established by this Agreement shall be disposed of immediately and shall not be returned for sale.

Section 11.02 Approval and Pricing. The Director shall meet with OPERATOR to review Food Products and prices at least on an annual basis on or about May 1 of each year with a target effective date of July 1. Prices may be changed only with the Director's prior written approval. Whenever unique economic conditions result in unusual Food Product or labor cost increases to OPERATOR, the Director will consider a request by OPERATOR for price changes at times other than the annual date specified above. Approval of price changes shall not be unreasonably withheld.

Article XII. PROMOTION.

Section 12.01 Sales Staff. OPERATOR shall engage a full-time banquet catering sales person. All OPERATOR's sales activities shall be conducted and operated under the supervision of the Director and shall in no way interfere with the orderly operation of any event. All sales activities shall be conducted at such times and at such locations designated by the Director. While OPERATOR is encouraged to pursue bookings for certain functions, all such bookings must be approved by the Director, which approval shall not be unreasonably withheld, so long as such sales are commercially profitable for Center and OPERATOR and are not in conflict with other scheduled events at the Center or Licensees. OPERATOR shall not advertise in any manner or form, on or about the Center except by means of such signs or forms of advertising as may be approved by the Director.

Article XIII. UTILITIES.

Center shall provide gas, electricity, and water services for use by OPERATOR in the Premises. OPERATOR shall participate in the Center's conservation and energy management program(s) for its operations throughout the term of this Agreement. OPERATOR shall provide its own signage, telephone, FAX and data lines.

Article XIV. MAINTENANCE AND CLEANUP.

Section 14.01 Equipment. OPERATOR shall maintain all equipment and small wares used in performance of its duties, including rolling stock, in a good state of repair, including routine maintenance or routine repair necessitated by ordinary use.

Section 14.02 Premises.

- (a) OPERATOR shall maintain all office space, storage rooms, alcoves, corridors, booths, trash facilities, kitchens and food service facilities in a clean and sanitary condition in accordance and consistent with all applicable rules of Center, demands and requirements of law, pertinent health and sanitary codes, and requirements of duly authorized health authorities of the City of Lodi, County of San Joaquin and any other health department having jurisdiction.
- (b) All refuse and waste material created by OPERATOR's operations in all public areas shall be promptly disposed of by OPERATOR after each event by delivery to a central location at the Center. Wet refuse must be stored in watertight containers pending removal from the Center. Waste foods shall be kept in closed metal containers until removed from the Center. All boxes shall be broken down, flattened and tied. CITY shall be responsible for disposal from the Center. The entire area within a radius of twenty-five (25) feet of each stand, bar area, commissary and work area, shall be kept free and clear from all loose trash, spills to floors, walls, windows or other property in said radius by reason of operation of said stand. OPERATOR shall employ the necessary personnel before, during and after hours of any event to comply with the provisions.

- (c) The Director shall have the right to inspect the Food Service Premise, and equipment at any reasonable time provided the inspection does not unreasonably interfere with OPERATOR's operations. The Director at her reasonable discretion, shall determine acceptable performance levels relative to maintenance and sanitary conditions.

Article XV. RECYCLING PROGRAM.

OPERATOR agrees to work with the Center to ensure effective recycling. OPERATOR shall be responsible for separating cans, cardboard, paper, plastic and glass for proper disposal.

Article XVI. INDEMNITY.

Section 16.01 Indemnity: OPERATOR shall fully indemnify and save harmless, CITY, its elected and appointed boards, commissions, officers, agents and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission of OPERATOR, its subOPERATORS or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the CITY, its elected and appointed boards, commissions, officers, agents and employees, and each and every one of them, reviewed, accepted or approved any service or work product performed or provided by the OPERATOR, and whether or not such Liabilities are litigated, settled or reduced to judgment.

Section 16.02 Obligation to Defend: OPERATOR shall, upon CITY's request, defend at OPERATOR's sole cost, any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of OPERATOR, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

Section 16.03 Insurance Policies: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights, nor shall the limits of such insurance limit the liability of OPERATOR hereunder. The provisions of this Section shall survive any expiration or termination of this Agreement.

Section 16.04 The City shall indemnify, defend, and hold harmless the OPERATOR and its agents, officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and court costs, arising out of or in connection with (i) a breach by the City of its representations hereunder or (ii) the acts, errors, omissions, conduct or operations of the City to the extent that such damage, loss or expense is caused or is claimed or alleged to have been caused, by any negligent act, error, omission, conduct, or operation of the City, provided that the indemnification provided for in this sentence shall not cover or apply to any matter that the City is indemnified against by the OPERATOR pursuant to this Agreement.

Article XVII. INSURANCE REQUIREMENTS.

During the entire term of this Agreement, OPERATOR shall maintain the following insurance:

Section 17.01 Minimum Scope of Insurance. Coverage should be at least as broad as:

- (a) Insurance Services Office Form No. CG 0001 (Commercial General Liability);
- (b) Insurance Services Office Form No.: CA 0001 (Ed. 1/87) (Automobile Liability, Code "any auto");

- (c) Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance.

Section 17.02 Minimum Limits of Insurance. OPERATOR shall maintain limits no less than:

- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury, personal injury and property damage.
- (c) Liquor Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (d) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$3,000,000 per accident.

Section 17.03 Deductibles and Self-Insured Retention's: Any deductibles or self-insured retentions must be declared to the CITY.

Section 17.04 Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

- (a) General Liability and Automobile Liability Coverages: CITY, its elected and appointed boards, commissions, officers, agents and employees, and each and every one of them, shall be covered as insured as respects: liability arising out of activities performed by or on behalf of OPERATOR; products and completed operations of OPERATOR; premises owned, leased or used by OPERATOR.
- (b) OPERATOR's insurance coverage shall be primary insurance as respects CITY, its elected and appointed boards, commissions, officers, agents and employees, and each and every one of them. Any insurance or self-insurance maintained by CITY, its elected and appointed boards, commissions, officers, agents and employees, and each and every one of them, shall be in excess of OPERATOR's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its elected and appointed boards, commissions, officers, agents and employees.
- (d) Coverage shall state that OPERATOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (e) All Coverages: OPERATOR shall request that each insurance policy required by this Agreement shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to CITY. In addition, OPERATOR agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to CITY and CITY approves the reduction in coverage or limits. OPERATOR further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to CITY.

Section 17.05 Acceptability of Insurers: Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B:IX be acceptable.

Section 17.06 Verification of Coverage: OPERATOR shall furnish CITY with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for CITY, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the CITY's Risk Manager.

Article XVIII. TERMINATION.

Section 18.01 Upon OPERATOR's Default.

- (a) In the event OPERATOR shall default in any of the payments described in Articles 4 and 6, or fail to perform any material obligation or condition of this Agreement, the Director shall notify OPERATOR of such default in writing. Such notice shall be deemed delivered upon presentation to the Food and Beverage Service Manager. A copy of such notice shall also be mailed to OPERATOR.
- (b) If the default is with respect to any payment required to be made by OPERATOR, OPERATOR shall correct such default within five (5) days of receipt of notice of default from Center. If the default is of a non-monetary nature, OPERATOR shall cure, or take all action necessary to begin the curative process, within ten (10) days of receipt of notice of default. In the event OPERATOR fails to cure or begin curing the default within the time specified, or such greater period as the CITY may permit, the CITY shall have all rights accorded by law including the right to terminate this Agreement.
- (c) In the event OPERATOR cannot perform its obligations under this Agreement because of a labor dispute involving OPERATOR's employees, such non-performance will not be considered a default; provided however, that in the event of a labor dispute, the CITY may operate the concessions until the labor dispute is settled.
- (d) Failure on the part of Center to promptly notify OPERATOR of default, shall not be deemed a waiver by Center of Center's rights on default of OPERATOR or such default at a subsequent time.

Section 18.02 Other Bases for Termination. In the event a decree or order by a court having jurisdiction shall be issued (i) adjudging OPERATOR bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of OPERATOR under any section of the Bankruptcy Code, as amended; (iii) ordering or approving the winding up or liquidation of OPERATOR affairs; (iv) appointing a receiver, liquidator or trustee in bankruptcy for OPERATOR or its property; or (v) if OPERATOR shall institute proceedings to be adjudicated a voluntary bankrupt, shall consent to the filing of any bankruptcy or insolvency proceedings against it; or (vi) if OPERATOR shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes; or (vii) if OPERATOR shall abandon this Agreement; or (viii) if a court shall have finally determined that OPERATOR has discriminated on account of color, race, religion, ancestry, national origin, sex or disability; then Center may terminate this Agreement and all rights of OPERATOR to continue to operate the concession thereunder.

Section 18.03 Post Termination Obligation.

- (a) In the event that the Agreement is terminated upon default, the CITY may assume control of the operation and all equipment installed at the Center and Center may continue to operate the same, until satisfactory arrangements may be reached with OPERATOR concerning the default, or until CITY shall obtain the services of another operator. During the period of operation by

the CITY, CITY shall be entitled to any supplies and inventory of OPERATOR on hand and OPERATOR shall not be entitled to any monies received from such operations except for reimbursement of the cost of supplies or inventories utilized during such period if not previously charged to operating expense.

- (b) In the event of a termination of this Agreement, either through expiration of the term thereof or through termination for cause, OPERATOR shall not be permitted to surrender its alcoholic beverage license in effect for the Center unless Center were to qualify for an alcoholic beverage license pursuant to Department of Alcoholic Beverage Control regulations. Center acknowledges that, unless Center were to qualify for a license, OPERATOR's license may only be transferred to a new operator or surrendered to the Department of Alcoholic Beverage Control.
- (c) In the event of termination of this Agreement, OPERATOR shall be liable for all payments required to be made to the Center up to and including said date of termination and shall pay the cost of restoring all small wares and equipment for which it is responsible, based on the most recent inventory accepted by the Director.

Article XIX. ARBITRATION.

In the event of a dispute between CITY and OPERATOR regarding the provisions of this Agreement, the parties may mutually agree to settle the claim or dispute, including the amount of any damages suffered, by binding arbitration or mediation in Lodi, California. Any dispute shall be governed by and construed in accordance with the laws of the State of California.

Article XX. MISCELLANEOUS.

Section 20.01 Assignment. The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by OPERATOR without written approval of the CITY.

Section 20.02 Modification. No agreement to modify, or modification of, this Agreement shall be binding on the parties unless the same is reduced to writing and executed by both parties.

Section 20.03 Operation Beyond Term. In the event that OPERATOR should operate after the expiration of the term of this Agreement, or termination for any other cause, such operation shall be deemed not to be a renewal or extension of the Agreement. During such period of operation, OPERATOR shall make payment to the CITY pursuant to the terms of this Agreement.

Section 20.04 Independent OPERATOR Status. OPERATOR shall be an independent OPERATOR and nothing contained in this Agreement shall be construed to create a joint venture or partnership by or among CITY and OPERATOR, nor shall OPERATOR hold itself out as or be considered an agent or employee of CITY.

Article XXI. ENTIRE AGREEMENT.

This Agreement, together with the operating memoranda, if any, embodies and constitutes the sole and entire agreement between the parties. There are no terms, obligations, covenants or conditions between the parties other than as contained herein.

Article XXII. NOTICES.

All notices, requests, demands and other communications required or permitted hereunder shall be deemed to have been duly given when personally delivered or two days after being mailed by first class mail, with postage prepaid or upon delivery by a recognized overnight delivery service as follows:

Any party may change its address by providing notice of such change to the other parties as set forth above.

Article XXIII. ATTORNEY'S FEES.

If any action, proceeding or arbitration arising out of or relating to this Agreement is commenced by either party, the prevailing party shall be entitled to receive from the other party in addition to any other relief that may be granted, the reasonable attorney's fees, costs and expense incurred in the action, proceeding or arbitration by the prevailing party.

Executed as of the day and year first above stated.

OPERATOR:

CITY OF LODI

By: _____
City Manager

By: _____

Date: _____

Title

Attest:

City Clerk

(CORPORATE SEAL)

Approved as to form:

City Attorney

RESOLUTION NO. 2004-59

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A ONE-YEAR AGREEMENT
FOR ON-SITE CATERING AT HUTCHINS STREET SQUARE

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a one-year on-site Catering Agreement at Hutchins Street Square with Wine Valley Catering, Inc.

Dated: April 7, 2004

=====

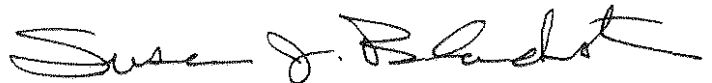
I hereby certify that Resolution No. 2004-59 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk